

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN M. GRIFFITHS and)
OCEAN MANAGEMENT SYSTEMS, INC.,)
)
 Plaintiffs,)
v.)
)
SARATOGA HORSEWORKS LTD.,)
)
 Defendant.)
)
)
)
)

1:07-cv-05722-BSJ-DCF
CM/ECF

ANSWER

Defendant, Saratoga Horseworks Ltd. (hereinafter “Saratoga Horseworks”), through its undersigned counsel, responds to the Complaint filed on June 15, 2007 in the United States District Court for the Southern District of New York (hereinafter “Complaint”) of the Plaintiff, John M. Griffiths (hereinafter “John M. Griffiths”) and the Plaintiff, Ocean Management Systems, Inc. (hereinafter “Ocean Management Systems” or “OMS”) as follows:

1. Saratoga Horseworks lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 1 of the Complaint.

2. Saratoga Horseworks admits the allegations in Paragraph 2 of the Complaint.

Claim I – Patent Infringement

3. With respect to Paragraph 3 of the Complaint, Saratoga Horseworks admits that the present claim is for infringement of a patent; however, Saratoga Horseworks denies that the present claim for infringement of the patent is pursuant to 35 U.S.C. 1114. Saratoga Horseworks admits the remaining allegations in Paragraph 3 of the Complaint.

4. Saratoga Horseworks lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 4 of the Complaint.

5. Saratoga Horseworks lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 5 of the Complaint.

6. Saratoga Horseworks admits the allegations in Paragraph 6 of the Complaint.

7. Saratoga Horseworks admits the allegations in Paragraph 7 of the Complaint.

8. Saratoga Horseworks admits the allegations in Paragraph 8 of the Complaint.

9. Saratoga Horseworks admits the allegations in Paragraph 9 of the Complaint.

10. Saratoga Horseworks denies the allegations in Paragraph 10 of the Complaint.

Claim II – Federal Trademark Infringement

11. Saratoga Horseworks admits the allegations in Paragraph 11 of the Complaint.

12. Saratoga Horseworks lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 12 of the Complaint that Plaintiff OMS is the owner of the trademark OMS. Saratoga Horseworks admits the remaining allegations in Paragraph 12 of the Complaint.

13. Saratoga Horseworks lacks sufficient knowledge or information to admit or deny the

allegations in Paragraph 13 of the Complaint that OMS has continuously used the OMS trademark in connection with OMS' goods since at least as early as 1994. Saratoga Horseworks admits the remaining allegations in Paragraph 13 of the Complaint.

14. Saratoga Horseworks admits the allegations in Paragraph 14 of the Complaint.

15. Saratoga Horseworks denies the allegations in Paragraph 15 of the Complaint.

Saratoga Horseworks believes the sale was authorized due to a lien on the backplates of John M. Griffiths and Ocean Management Systems.

16. Saratoga Horseworks denies the allegations in Paragraph 16 of the Complaint.

17. Saratoga Horseworks denies the allegations in Paragraph 17 of the Complaint.

Claim III – Federal Unfair Competition

18. Saratoga Horseworks admits the allegations in Paragraph 18 of the Complaint.

19. Saratoga Horseworks admits the allegations in Paragraph 19 of the Complaint.

20. Saratoga Horseworks denies the allegations in Paragraph 20 of the Complaint.

21. Saratoga Horseworks denies the allegations in Paragraph 21 of the Complaint.

Claim IV – Common Law Unfair Competition

22. Saratoga Horseworks admits the allegations in Paragraph 22 of the Complaint.

23. Saratoga Horseworks admits the allegations in Paragraph 23 of the Complaint.

24. Saratoga Horseworks denies the allegations in Paragraph 24 of the Complaint.

25. Saratoga Horseworks denies the allegations in Paragraph 25 of the Complaint.

26. Any and all remaining allegations in the Complaint are denied.

First Defense – Failure to Mark

27. Saratoga Horseworks alleges that John M. Griffiths and Ocean Management Systems,

Inc. failed to mark the Backplate for Use with a Scuba Apparatus with the patent number pursuant to 35 U.S.C. § 287.

28. Saratoga Horseworks alleges that John M. Griffiths and Ocean Management Systems, Inc. did not send a cease and desist letter to Saratoga Horseworks indicating that the Backplate for Use with a Scuba Apparatus was covered by a patent.

29. Saratoga Horseworks alleges that if monetary recovery is awarded to John M. Griffiths and Ocean Management Systems, Inc. for patent infringement, then the monetary recovery should be limited based on the period in which Saratoga Horseworks received actual notice of that the Backplate for Use with a Scuba Apparatus was covered by a patent.

Second Defense – Lack of Federal Trademark Registration Notice

30. Saratoga Horseworks alleges that John M. Griffiths and Ocean Management Systems, Inc. failed to display the OMS trademark with the words “Registered in U.S. Patent & Trademark Office” or “Reg. U.S. Pat. Tm. Off.” or the letter R enclosed within a circle, thus ® pursuant to 15 U.S.C. § 1111.

31. Saratoga Horseworks alleges that John M. Griffiths and Ocean Management Systems, Inc. failed to provide Saratoga Horseworks with a cease and desist letter indicating the OMS trademark was a registered trademark.

32. Saratoga Horseworks alleges that if monetary recovery is awarded to John M. Griffiths and Ocean Management Systems, Inc. for trademark infringement, then the monetary recovery should be limited based on John M. Griffiths and Ocean Management Systems, Inc.’s failure to provide notice of a federally registered trademark.

Third Defense – Breach of Contract and Collection

33. Saratoga Horseworks refers John M. Griffiths and Ocean Management Systems to

Saratoga Horseworks' Complaint filed in the Supreme Court of the State of New York County of Monroe (hereinafter "State Complaint"). Saratoga Horseworks' incorporates by reference each and every allegation in the State Complaint in Saratoga Horseworks' Answer to the Complaint.

WHEREFORE, Saratoga Horseworks prays:

- a. This court finds that monetary recovery to John M. Griffiths and Ocean Management Systems is limited by 35 U.S.C. § 287 and 15 U.S.C. § 1111; and
- b. This court grants such other relief as this court deems just and appropriate.

Dated: September 6, 2007

Respectfully submitted,

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